IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.435 OF 2005
IN
NOTICE OF MOTION NO.872 OF 2005
IN
SUIT NO.789 OF 2005

S.N.Karani & Compnay .. Appellant

v/s.

Mr.Kalpesh Velinkar & ors. .. Respondents

Mr.S.A.Diwan with Ms.Smita Vora i/by M/s.Shantilal & Co. for the appellant.

Mr.Salil Shah with Mr.Darius Dalal i/by M/s.Jehangir Gulabbhai & Bilimoria and Daruwalla for the respondents.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 8th June, 2005

P.C.

Heard.

2. In compliance of the order dated 26th April, 2005, Shri P.V.Mohan Krishnan, Technical Director, National Informatics Centre has submitted the report.

3. The report records its conclusion thus-

> It is concluded that the software S-2 of the Appellant and the software S-1 of the Respondent are Payroll packages which have evolved from a common core generic Payroll package using Clipper technology. The signatures of the programmers through the

Source code evolution are same in both the sets until the year mentioned in the conclusions below:

a) The software set of the Appellant was a version containing the customisation effort of the software for the Shipping profession with code updations made up to the year 2004.

b) The software set of the Respondent has further customisation effort for the Shipping carried out into the year 2005.

Both the softwares are substantially similar with identical core functions.

4. In the light of the report submitted by the Court Commissioner, Mr.Shyam Diwan, the learned counsel for the appellant submits that the appellant may be given liberty to apply for appropriate ad-interim relief before the learned motion Judge until the motion is heard finally.

5. Mr.Salil Shah, the learned counsel for the respondents prays for copy of the report submitted by the Court Commissioner.

6. Having considered the matter, we are of the view that the appeal need not be kept pending and the interest of justice shall be subserved by the following order:-

i) The parties may apply for copy of the report submitted by the Court

Commissioner Shri P.V. Mohan Krishnan dated 26th May, 2005 and upon such application being made, the office is directed to supply copy of the report to the parties on payment of its cost.

ii) The appellant-original plaintiff shall be at liberty to apply for ad-interim relief before the learned motion Judge.

iii) Until further order in the notice of motion by the learned motion Judge, the undertaking given by the respondent pursuant to the order dated 26th April, 2005 shall remain operative.

6. The appeal stands disposed of in the aforesaid terms.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)